

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JOSEPH WRIGHT, and T. KIMBERLY
WILLIAMS,

Plaintiffs/Counter-
defendants,

vs.

ELTON CORPORATION, GREGORY
FIELDS, FIRST REPUBLIC TRUST
COMPANY OF DELAWARE LLC, and
M.C. DUPONT CLARK EMPLOYEES
PENSION TRUST,

Defendants/Counter-
claimants/Third-party
Plaintiffs,

vs.

JAMES B. WYETH, Solely as Executor
and Personal Representative of the Estate
of Phyllis M. Wyeth, MARY MILLS ABEL
SMITH, CHRISTOPHER T. DUPONT,
LUCY DUNNE, representative for HELENA
DUPONT WRIGHT, KATHARINE D.
GAHAGAN and JAMES MILLS,

Third-party defendants.

C.A. NO. 17-286-JFB

MEMORANDUM and ORDER

This matter is before the Court on Christopher T. DuPont's motion to avoid third party liability ([D.I. 517](#)) and his Opt-out Notice ([D.I. 512](#)) under Paragraph 9 of the Court's Findings of Fact and Conclusions of Law ("Order") dated January 25, 2023 ([D.I. 482](#)). The Court will construe the Opt-out Notice as a motion. Plaintiff, T. Kimberly Williams, opposes both motions. [D.I. 521](#), [522](#) and [523](#).

Paragraph 9 of the Order states that "[a]ll qualified employers who do not have employees currently receiving pensions may opt out, and avoid joint and several liability, by establishing a qualified ERISA plan for their past, present, and future employees which

is of equal or greater value to that provided in the duPont trust.” [D.I. 482 at 41](#). Christopher duPont contends that he meets the criteria specified in that paragraph and therefore is entitled to avoid joint and several liability and be dismissed from the action. In the purported notice, he notifies the Court that he “opts out” and can “avoid joint and several liability” because he plans to establish such a qualified plan. He states he does not have any employees currently receiving pensions and has “already engaged an actuary who is establishing a qualified ERISA plan” that will meet the requirements of the Order. [D.I. 512](#). In support of his motion, he submits his own declaration and that of an actuary. [D.I. 518](#), [D.I. 519](#), [D.I. 519-1](#), [D.I. 520](#), [D.I. 520-1](#).

The Court finds it is premature at this point for Christopher duPont to seek to resolve his liability for funding. The Court has put the resolution of such matters in the hands of the Special Master and the experts and fiduciaries he appoints to accomplish the tasks set out in the Court’s Order.

IT IS ORDERED that

1. Christopher T. DuPont’s motion to avoid third party liability ([D.I. 517](#)) is denied as premature.
2. Christopher T. DuPont’s Opt-out Notice ([D.I. 512](#)), construed as a motion, is denied as premature.

Dated this 16th day of March 2023.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge